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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER HINES,

Defendant and Appellant.

E049534

(Super.Ct.No. FVI901969)

OPINION

APPEAL from the Superior Court of San Bernardino County. Bridgid M. McCann, Judge. Dismissed.

Jamie L. Popper, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Pursuant to a plea agreement, defendant and appellant Christopher Hines pled guilty to one count of unlawful possession of a firearm by a felon (Pen. Code, § 12021,

subd. (a)(1))<sup>1</sup> and admitted that he had one prior strike conviction (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)). In exchange, the trial court dismissed other charges and allegations and sentenced defendant to two years eight months in state prison.

On October 16, 2009, and November 4, 2009, defendant filed notices of appeal requesting a certificate of probable cause on the ground of ineffective assistance of counsel for failing to file a motion to suppress evidence and a *Pitchess*<sup>2</sup> motion. Defendant's request for a certificate of probable cause was denied. We dismiss.

### FACTUAL BACKGROUND

The following facts are taken from the police report: On September 2, 2009, Detective J. Hoffman conducted a traffic stop on a car for a Vehicle Code violation. Defendant was the driver of the car. The detective asked defendant for his license and registration and asked him to exit the car. Detective Hoffman noticed that defendant was having body tremors and was continuously looking back at his car. He asked defendant if everything was okay, and then he walked up to the car to check the vehicle identification number (VIN) sticker. While looking at the VIN, Detective Hoffman scanned inside defendant's car and noticed that the passenger in the car, whom defendant identified as his brother, looked very nervous. Detective Hoffman asked him a few questions. At that time, Detective Solomon arrived at the scene. Detective Hoffman asked defendant if he had anything illegal in the car. He specifically asked if defendant had any drugs, guns,

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<sup>1</sup> All further statutory references will be to the Penal Code unless otherwise noted.

<sup>2</sup> *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

large amounts of money, or explosives. Defendant said “no” to each item. Detective Hoffman asked if he could search the car, and defendant refused. Defendant said he felt faint and asked if he could leave. Detective Hoffman said he could leave as soon as the citation was completed. While Detective Hoffman was finishing the citation, he asked Detective Solomon if he could have his drug detection K-9 conduct an “open air sniff” of the car. The K-9 alerted to the right passenger door. Detective Hoffman explained to defendant that, based on the K-9 alert, they were going to search his car. The searched revealed marijuana residue on the floorboards of the car and two handguns in the trunk.

### DISCUSSION

Dependant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436, and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493] setting forth a statement of the case and three potential arguable issues: 1) whether ineffective assistance of counsel may be argued on appeal without a certificate of probable cause; 2) whether a writ of mandamus is appropriate because the trial court erred in denying the request for certificate of probable cause; and 3) whether, prior to defendant’s plea, his counsel was ineffective for failing to move to suppress the guns on the grounds that the detention was prolonged and the search of the trunk exceeded the scope of a permissible search. Counsel has also requested this court to undertake a review of the entire record. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

We offered defendant an opportunity to file a personal supplemental brief, which he has done. Defendant begins by stating that he “wish[ed] to argue the suppression of evidence,” and then proceeds to make unsupported accusations that Detective Hoffman falsified the police report.

Section 1237.5 states, in part, as follows: “No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, . . . except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable, constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.”

Defendant filed a notice of appeal in propria persona, which contained a statement in which he claimed his counsel was ineffective for failing to file a motion to suppress and a *Pitchess* motion. The trial court denied the request for certificate of probable cause. Later, through his appellate counsel, defendant filed a supplemental notice of appeal which stated: “This appeal is based on the sentence or other matters occurring after the plea and do not affect its validity,” and “This appeal challenges the validity of the plea or admission or probation violation. . . .” The trial court again denied a certificate of probable cause. Defendant did not challenge the denial by way of writ of mandate. “[W]here, as here, a certificate of probable cause has been denied, the appeal is not operative and the denial of the certificate must be reviewed by writ of mandate.”

(*People v. Castelan* (1995) 32 Cal.App.4th 1185, 1188.) Thus, the appeal must be dismissed. (*Id.* at pp. 1188-1189.)

DISPOSITION

The appeal is dismissed.

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HOLLENHORST

J.

We concur:

RAMIREZ

P.J.

KING

J.